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United Nations Commission on International Trade Law
Working Group V (Insolvency Law)
Forty-fifth session
New York, 21-25 April 2014

Annotated provisional agenda for the forty-fifth session of Working Group V (Insolvency Law)

I. Provisional agenda

1. Opening of the Working Group session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics.
5. Other business.
6. Adoption of the report of the Working Group.

II. Composition of the Working Group

1. The Working Group is composed of the following States: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Botswana, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Côte d'Ivoire, Croatia, Denmark, Ecuador, El Salvador, Fiji, France, Gabon, Georgia, Germany, Greece, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Kuwait, Liberia, Malaysia, Mauritania, Mauritius, Mexico, Namibia, Nigeria, Pakistan, Panama, Paraguay, Philippines, Republic of Korea, Russian Federation, Sierra Leone, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zambia.

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the

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deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The forty-fifth session of Working Group V (Insolvency Law) is scheduled to be held in New York from 21-25 April 2014. Meeting hours will be from 10.00 a.m. to 1.00 p.m. and from 3.00 p.m. to 6.00 p.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Consideration of insolvency topics

1. Remaining elements of the current mandate

5. At its forty-sixth session (2013), after adopting the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency and part four of the UNCITRAL Legislative Guide on Insolvency Law, the Commission decided that Working Group V should hold a colloquium in the first few days of the working group session scheduled for the second half of 2013 to clarify how it would proceed with the enterprise group issues and other parts of its current mandate and to consider topics for possible future work, including insolvency issues specific to micro, small and medium enterprises (MSMEs). The conclusions of that colloquium were not to be determinative, but were to be considered and evaluated by the Working Group in the remaining days of that session, in the context of the existing mandate. Topics identified for possible future work should be reported to the Commission in 2014.[1]

(a) Treatment of enterprise groups in insolvency

6. The colloquium was held from 16-18 December 2013 and was followed by the forty-fourth session of the Working Group from 19-20 December. The Working Group agreed to continue its work on cross-border insolvency of multinational enterprise groups by developing provisions on a number issues, some of which would extend the existing provisions of the Model Law on Cross-Border Insolvency and part three of the Legislative Guide and involve reference to the Practice Guide on Cross-Border Insolvency Cooperation (A/CN.9/798, para.16).

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[1] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 325.

(b) Obligations of directors of enterprise group companies in the period approaching insolvency

7. The Working Group agreed on the importance of addressing the obligations of directors of enterprise group companies in the period approaching insolvency, given that there were clearly difficult practical problems in this area and that solutions would be of great benefit to the operation of efficient insolvency regimes. At the same time, the Working Group noted that there were issues that needed to be considered carefully so that solutions would not hinder business recovery, make it difficult for directors to continue to work to facilitate that recovery, or influence directors to prematurely commence insolvency proceedings. In light of those considerations, the Working Group agreed that it would be helpful to have the next steps taken informally in an expert group whose task would be to examine how part four of the Legislative Guide could be applied in the enterprise group context and any additional issues (such as conflicts between a director's duty to its own company and the interests of the group and issues of governing law) that might need to be addressed. The informal expert group would report back to the Working Group no later than the session in the second half of 2014 (A/CN.9/798, para. 23).

(c) Insolvency of large and complex financial institutions

8. The Working Group encouraged the Secretariat to continue with its current mandate to monitor developments in the field of the insolvency of large and complex financial institutions, namely regulatory developments within supranational bodies or in selected national legislation (A/CN.9/798, paras. 20-22).

2. Micro, small and medium sized enterprises (MSMEs)

9. At its forty-sixth session (2013), the Commission requested Working Group V to conduct, at its Spring 2014 session, a preliminary examination of issues relevant to the insolvency of MSMEs, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for MSMEs. If it did not, the Working Group was requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for MSMEs. Its conclusions on those MSME issues were to be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what, if any, future work might be required.[2]

3. Documentation for the forty-fifth session

10. The Working Group will have before it notes by the Secretariat on (a) Facilitating the cross-border insolvency of multinational enterprise groups (A/CN.9/WG.V/WP.120); and (b) UNCITRAL Legislative Guide on Insolvency Law: solutions for the insolvency of MSMEs (A/CN.9/WG.V/WP.121).

11. In planning the attendance of their representatives, States and interested organizations may wish to note, in addition to the documents referred to in the working papers for the session, the following background documents:

(a) The UNCITRAL Legislative Guide on Insolvency Law (2004), including parts three (2010) and four (2013); and

[2] Ibid, para. 326.

(b) The UNCITRAL Model Law on Cross-Border Insolvency (1997).

12. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 6. Adoption of the report

13. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-seventh session of the Commission planned to be held in New York, from 7 to 25 July 2014. The report will include the main conclusions reached by the Working Group. The substance of the Working Group's deliberations at its meeting on Friday morning will be summarily read out for the record and subsequently incorporated into the report.

IV. Scheduling of meetings

14. The Working Group's forty-fifth session will last for five working days. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session, the Working Group is expected to hold substantive deliberations in the allocated time. The report is to be adopted at the last meeting of the Working Group (on Friday afternoon).